STATE OF MICHIGAN

COURT OF APPEALS

UNPUBLISHED
April 25, 2013

In the Matter of D. L. WARREN, JR., Minor.

No. 312313
Washtenaw Circuit Court
Family Division
LC No. 2010-000093-NA

Before: BECKERING, P.J., and METER and RIORDAN, JJ.

PER CURIAM.

Respondent-father appeals as of right the order terminating his parental rights to the minor child under MCL 712A.19b(3)(c)(*i*), (g), and (j). We affirm.

"In order to terminate parental rights, the trial court must find by clear and convincing evidence that at least one of the statutory grounds for termination in MCL 712A.19b(3) has been met." *In re VanDalen*, 293 Mich App 120, 139; 809 NW2d 412 (2011). "We review the trial court's determination for clear error." *Id*. "A finding is clearly erroneous if, although there is evidence to support it, we are left with a definite and firm conviction that a mistake has been made." *In re HRC*, 286 Mich App 444, 459; 781 NW2d 105 (2009).

Respondent admitted that he had sold drugs in the past and that he was once robbed at gunpoint during the course of a drug transaction while the child was with him. At the termination hearing, respondent testified that he had "a drug problem," specifically "a cocaine problem." Respondent received substance-abuse treatment through multiple programs during the case, yet he relapsed multiple times and failed to comply with his court-ordered drug screens. One of the foster-care workers testified that respondent was unable to provide the child with the stable environment the child needed, and a second caseworker reported, in an "updated service plan," that respondent had "not demonstrated an ability to provide a consistently safe and stable environment for himself or his child."

The foregoing evidence of record supported the trial court's finding of a statutory basis for termination under MCL 712A.19b(3)(g) and (j). See, e.g., *In re Williams*, 286 Mich App 253, 272-273; 779 NW2d 286 (2009) (termination was proper under MCL 712A.19b(3)(g) where the evidence supported that the respondent-mother failed to overcome her "longstanding drug addiction"), and *In re Gazella*, 264 Mich App 668, 676; 692 NW2d 708 (2005), superseded in part on other grounds by statute as stated in *In re Hansen*, 285 Mich App 158, 163; 774 NW2d 698 (2009), vacated on other grounds 486 Mich 1037 (2010) ("a parent must benefit from services offered so that he or she can improve parenting skills to the point where the children

will no longer be at risk in the parent's custody"). Accordingly, we cannot conclude that the trial court committed clear error in finding that petitioner established, by clear and convincing evidence, at least one statutory ground for termination. *In re VanDalen*, 293 Mich App at 139.

Having concluded that the trial court did not clearly err in finding one statutory ground for termination, i.e., MCL 712A.19b(3)(g) or (j), we need not address the trial court's additional ground for termination, MCL 712A.19b(3)(c)(*i*).[1] *In re HRC*, 286 Mich App 444, 461; 781 NW2d 105 (2009).

In concluding that the trial court properly found that petitioner established, by clear and convincing evidence, at least one statutory ground for termination, we reject respondent's related argument that the trial court improperly shifted petitioner's burden of proof onto respondent and required him to prove his parental fitness.

Respondent does not challenge the trial court's finding that termination was in the child's best interests. At any rate, on the record before us, the trial court's best-interests finding does not leave us "with a definite and firm conviction that a mistake has been made." *In re HRC*, 286 Mich App at 450. See, e.g., *In re VanDalen*, 293 Mich App 120, 141; 809 NW2d 412 (2011) (holding that "[t]he evidence clearly supported the trial court's finding that termination was in the children's best interests" where "[t]he children had been placed in a stable home where they were thriving and progressing and that could provide them continued stability and permanency given the foster parents' desire to adopt them"), and *In re BZ*, 264 Mich App 286, 301; 690 NW2d 505 (2004) ("[T]he case closure report indicated that all three children had flourished under the care of guardians. . . . [P]etitioners had expressed an interest in adopting . . . the minor children. Under these circumstances, we conclude that the court did not clearly err in determining that termination of the respondent's parental rights was not contrary to the children's best interests.").

Although this argument is not asserted in his statement of questions presented for appeal, respondent appears to argue, at certain points in his brief, that the trial court did not have proper jurisdiction. On the basis of respondent's September 30, 2010, plea, the trial court took jurisdiction over the child. Approximately one year later, petitioner filed a supplemental petition seeking termination of respondent's parental rights. Thereafter, on August 9, 2012, the trial court terminated respondent's parental rights. Under these circumstances, jurisdiction may be challenged only on direct appeal of the jurisdictional decision, not by collateral attack in an appeal of an order terminating parental rights. *In re SLH*, 277 Mich App 662, 668; 747 NW2d 547 (2008). Accordingly, to the extent that respondent raises a jurisdictional challenge on appeal, such a claim of error constitutes a collateral attack and is not properly before this Court.

Respondent also argues that the trial court was biased against respondent, as demonstrated by the court's allegedly improper limitation of respondent's ability to fully present his case and the court's allegedly unsupported opinion that respondent had a "documented anger

[1] Nevertheless, we also conclude that the record supported the trial court's finding that MCL 712A.19b(3)(c)(*i*) constituted an additional ground for termination.

problem." We disagree. Our review of respondent's unpreserved issue is "limited to plain error affecting substantial rights." *In re Utrera*, 281 Mich App 1, 8-9; 761 NW2d 253 (2008). "The fundamental requirements of procedural due process are notice and a meaningful opportunity to be heard before an impartial decision maker." *In re Beck*, 287 Mich App 400, 401-402; 788 NW2d 697 (2010). "A trial judge is presumed to be impartial and the party who asserts partiality has a heavy burden of overcoming that presumption." *In re MKK*, 286 Mich App 546, 566; 781 NW2d 132 (2009).

At the June 5, 2012, hearing, respondent's counsel cross-examined Nicole Carter, a foster-care worker, regarding Dr. Joshua Ehrlich's psychological evaluation of respondent. The trial court permitted respondent's counsel to question Carter regarding what she did "as a result of reading the psychological evaluation." However, the trial court declined counsel's request for a recess to allow Carter to review Dr. Ehrlich's report and testify regarding Dr. Ehrlich's conclusions. Rather, the trial court stated that it would review Dr. Ehrlich's report. The trial court's opinion and order indicates that it reviewed Dr. Ehrlich's report. The trial court is required to control the proceedings and has wide latitude to exercise its discretion in performing that requirement. See *People v Conley*, 270 Mich App 301, 307; 715 NW2d 377 (2006). On the record before us, we do not find that the trial court improperly limited respondent's ability to present his case. Respondent has not met his "heavy burden of overcoming" the presumption of judicial impartiality, *In re MKK*, 286 Mich App at 566, or demonstrated plain error affecting his substantial rights, *In re Utrera*, 281 Mich App at 8-9.

Respondent also asserts that the trial court demonstrated bias against respondent during the March 29, 2012, hearing, when the court stated that respondent had a "documented anger management problem." Contrary to respondent's claim on appeal, the record before the trial court supported that respondent had anger-management issues. The record supports that respondent was on probation for domestic violence at the beginning of the case and was attending an "alternatives to domestic aggression" program. The record also supports that respondent was hostile toward Carter at times and would yell at her. Accordingly, the trial court's reference to respondent's "documented anger management problem" was supported by the record and was not an indication of judicial bias against respondent. Again, respondent has not met his "heavy burden of overcoming" the presumption of judicial impartiality, *In re MKK*, 286 Mich App at 566, or demonstrated plain error affecting his substantial rights, *In re Utrera*, 281 Mich App at 8-9.

Finally, respondent argues that he was denied reasonable reunification services and a meaningful opportunity to participate in the case. We disagree. Our review of respondent's unpreserved issue is "limited to plain error affecting substantial rights." *In re Utrera*, 281 Mich App at 8-9. "Generally, when a child is removed from the parents' custody, the petitioner is required to make reasonable efforts to rectify the conditions that caused the child's removal by adopting a service plan." *In re HRC*, 286 Mich App at 462; see also *In re Fried*, 266 Mich App 535, 542; 702 NW2d 192 (2005). Moreover, "[p]arents have a significant interest in the companionship, care, custody, and management of their children, and the interest is an element of liberty protected by due process." *In re JK*, 468 Mich 202, 210; 661 NW2d 216 (2003). "The fundamental requisite of due process of law is the opportunity to be heard." *In re Rood*, 483 Mich 73, 92; 763 NW2d 587 (2009) (internal citations and quotation marks omitted).

Respondent does not articulate how the services he received were deficient, and the record supports that respondent received ample reunification services. Respondent received referrals for substance-abuse treatment, random drug screens, parenting classes, counseling, alcoholics-anonymous and narcotics-anonymous classes, an "alternatives to domestic aggression" program, and a psychological evaluation, and he was provided supervised parenting time. Accordingly, we find that respondent was not denied reasonable reunification services. See *In re Fried*, 266 Mich App at 542-543 (finding that reasonable reunification efforts were made where "petitioner provided referrals for psychological and substance abuse evaluations [and substance-abuse treatment] for respondent" and the "foster care worker set up drug screens and provided supervised visitation with the child").

Respondent also asserts that he was denied a meaningful opportunity to participate because the child was not returned to him upon his successful completion of reunification services.[2] According to respondent, he fully complied with services "[b]etween September 2010 and May 2011" and reunification should have occurred at that time. However, the record supports that respondent was not fully in compliance with his case service plan between September 2010 and May 2011. Respondent tested positive for drugs or failed to schedule or attend drug screens on numerous occasions during this time, which caused his parenting time to be suspended on multiple occasions. Moreover, although respondent completed parenting classes and a substance-abuse treatment program in May 2011, he relapsed shortly thereafter and had only sporadic compliance with services during the remainder of the case. Accordingly, on the record before us, respondent has not demonstrated plain error affecting his substantial rights. *In re Utrera*, 281 Mich App at 8-9.

Affirmed.

/s/ Jane M. Beckering
/s/ Patrick M. Meter
/s/ Michael J. Riordan

[2] Notably, respondent does not argue, and the record does not support, that he was not provided notice or an opportunity to be heard throughout the proceedings. *In re Rood*, 483 Mich at 92; *In re Beck*, 287 Mich App at 401-402.